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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,543	02/27/2004	Leo F. Schwab	GP-304148	9451

7590 10/19/2006

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EXAMINER

KENNEDY, JOSHUA T

ART UNIT PAPER NUMBER

3679

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,543

Applicant(s)

SCHWAB, LEO F.

Examiner

Joshua T. Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/11/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-14 and 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-5, 7-14, and 16-22 have been examined.

Claims 6 and 15 have been cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 8, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ville et al (USPN 4,543,074).

As to Claims 1 and 7. Ville et al disclose a device for releasably fastening a first component (1) to a second component (2), comprising:

a first component (1);

a second component (2);

a device body (14);

a first fastener (17) extending from said device body and operable to attach said device body to the first component (Fig 1);

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a second fastener (17) extending from said device body and adapted to attach said device to the second component (Fig 1),

whereby when a force of greater than a predetermined amount is applied to the second component, said first fastener detaches from the first component without damaging the first component (Fig 4; Col 5, Lines 51-66), and

whereby when a force of less than a predetermined amount is applied to the second component, said first fastener remains attached to the first component (11; Fig 1).

As to Claims 2 and 8. Ville et al disclose the device body (14) including an upper arm (Examiner considers the left portion of the device body to be the upper arm) and a lower arm (Examiner considers the right portion of the device body to be the lower arm) connected by an intermediate arm (19).

As to Claim 21. Ville et al disclose an assembly comprising;

a first component (1);

a second component (2);

a device body (14) including a first fastener (17; Shown on left side of figures) extending therefrom and operable to releasably attach the device body to the first component, a second component (17; Shown on right side of figures) extending from the device body and adapted to attach the device to the second component (2, 2a), and means for causing the first fastener to detach from the first component without

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damaging the first component when a force greater than a predetermined amount is applied to the second component (Fig 4).

Claims 1-4, 7-10, 14, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Roof et al (USPN 5,101,540).

As to Claims 1 and 7. Roof et al disclose a device for releasably fastening a first component (22) to a second component (16), comprising:

- a first component (22);

- a second component (16);

- a device body (18);

- a first fastener (40) extending from said device body and operable to **releasably** attach said device body to the first component (Fig 6);

- a second fastener (52) extending from said device body and adapted to attach said device to the second component (Fig 6),

whereby when a force of greater than a predetermined amount is applied to the second component, said first fastener detaches from the first component without damaging the first component (No patentable weight has been given to statements of the use of a device. Claims 1 and 7 are based solely upon the device, not how it is to be used. There is no particular structure claimed to define how this operation is to be performed; Though no weight has been given to this limitation, it is noted that since the

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two components are not permanently secured to the device it is inherent that one can apply a certain force to the second component to dislodge the first fastener from the first component without damaging the first component), and

whereby when a force of less than a predetermined amount is applied to the second component, said first fastener remains attached to the first component.

As to Claims 2 and 8. Roof et al disclose the device body (18) including an upper arm (42) and a lower arm (50) connected by an intermediate arm (38),

As to Claim 3 and 9. Roof et al disclose the first fastener (1a) being a return flange (40) defining a channel (Examiner considers the channel to be defined by the v-shaped area formed by surrounding walls 40 and 42) between said return flange and said upper arm (42).

As to Claims 4 and 10. Roof et al disclose a second fastener being an attachment arm (52) extending from said intermediate arm (38) and defining a channel (Examiner considers the channel to be defined by the v-shaped area formed by surrounding walls 52 and 50) between said attachment arm and said lower arm (Fig 6).

As to Claims 14 and 20. Roof et al disclose the first component being a lamp assembly (22) and the second component being a bumper fascia (Examiner interprets fascia as a panel).

As to Claim 16. Roof et al disclose a projection (56, 58) extending outwardly from said intermediate arm, said projection operable to provide a surface to allow for manually removing said fascia from said device body (Col 4, Lines 47-57).

As to Claim 17. Roof et al disclose said lamp assembly including a housing (22) and a lamp lens (26); and

the housing including a finger (36) extending therefrom that engages with an end (44) of said device body, said end of said device body overlapping said finger by a distance and including a radius formed thereon (Fig 2), and with the radius being in engagement with the finger (Fig 6).

As to Claims 18 and 19. The limitation of varying a predetermined force being applied to said fascia to detach said first fastener from said lamp assembly has been given limited patentable weight since there is no structure claimed in Claims 18 and 19 and the claim is drawn to the use of a device.

As to Claim 21. Roof et al disclose a device for releasably fastening a first component (22) to a second component (16), comprising:

a first component (22);

a second component (16);

a device body (18) including a first fastener (40) extending from said device body and operable to releasably attach said device body to the first component (Fig 6), a second fastener (52) extending from said device body and adapted to attach said device to the second component (Fig 6), and a means for causing the first fastener to detach from the first component without damaging the first component when a force of greater than a predetermined amount is applied to the second component (There is no particular structure claimed to define how this operation is to be performed; It is noted that since the two components are not permanently secured to the device it is inherent that one can apply a certain force (to be the "means for causing the first fastener to detach...") to the second component to dislodge the first fastener from the first component without damaging the first component).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 13, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roof et al.

Roof et al disclose the device significantly as claimed, however do not disclose the first component being a head lamp or a tail lamp assembly. Per Applicant's disclosure (Paragraph 2) the connection of fascia to a headlamp or tail lamp is well known within the art, therefore, it would have been obvious to one of ordinary skill in the art to use the clip of Roof et al to secure the panel to a headlamp or a tail lamp to control the dimensional variation between the fascia and the lamp assembly.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roof et al as applied to claims 1-4, 7-10, 14, and 16-20 above, and further in view of Schneider et al (US 5,363,537).

Roof et al disclose said device body significantly as claimed but do not disclose the device body being constructed of a one of an acetyl material, a polypropylene material, and a plastic material.

Schneider et al disclose a similar vehicle retaining clip (or device body) "made of a springy or resilient material, preferably metal such as steel or plastic, which when deformed exerts forces in the opposite direction, tending to return the clip to its original shape" (Col 4, Lines 22-25). As a commercially available inexpensive plastic, acetyl and polypropylene, along with steel are well known materials for use in this art and it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a plastic material such as polypropylene or an acetyl material to be used because the selection of a known material based upon its suitability for the intended use

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has long been deemed to be a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Response to Arguments

Applicant's arguments with respect to claims 1-5, 7-14, and 16-20 have been considered but are not persuasive.

As to Claims 1-3 and 7-9 (currently rejected under Ville), Applicant argues:

"The element (1a) extends from and is an integral part of the "first component (1)," not the device body...The element (2a) is separate from and slidable relative to the device body (14)"

Examiner points out a typographical error made by the examiner in the previous action and has clarified above. The first and second fasteners should have been the pins (17), the first being on the left and the second on the right. Also, the Examiner intended to reference Figure 4, not figure 3, in the previous rejection. In particular to show that when a force of greater than a predetermined amount is applied to the second component, said first fastener detaches from the first component without damaging the first component. It is the device body that is damaged, not the first component.

It is also noted that it is unclear to Examiner what defines a "return flange" over any other flange since no structure of this is set forth by Applicant in the claims.

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Applicant is relying on the specification to read limitations into the claim. Since there is no structure recited, Examiner interprets the return flange as a flange.

As to Claims 1-4, 7-10, 14, and 16-20 rejected under Roof et al, Applicant argues:

"The examiner is basing this statement [that it is possible to apply a certain force to the second component...] on pure speculation—not a single teaching or suggestion whatsoever in the '540 patent implies that this would or could happen, or even that it would be possible or desirable...the '540 patent only teaches releasing of clip when prying on the clip with tool—nothing at all about the releasing of one component when a force is applied to the other component"

Examiner respectfully disagrees and is not speculating. It is a matter of fact that this will happen as it is an inherent characteristic as Claim 1 recites a device body having a first and second fastener. Roof et al meets those structural requirements and because it meets the structural limitations it inherently performs the same function. If Applicant disagrees, then it is an admittance of an incomplete claim. The breadth of this claim does not state what the predetermined force is. What if the predetermined force is equal to zero? Applicant is attempting to define a device in terms of two separate components that are connected to that device that are not claimed.

It is noted that a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural

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limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BdPatApp & Inter 1987). In other words patentability is based upon claimed structure, not function.

Applicant additionally argues:

"The advantage of the present invention...is especially apparent when one component is a bumper fascia and the other is a headlamp or tail lamp."

Examiner respectfully disagrees and again it is noted that it is unclear to Examiner what constitutes a "bumper fascia" since no structure of this is set forth by Applicant in the claims. Applicant is relying on the specification to read limitations into the claim. Since there is no structure recited, Examiner interprets bumper fascia as a panel.

As to Claim 2, Applicant argues:

"the upper arm (42) and lower arm (50) are not connected by the intermediate arm (38)"

Examiner respectfully disagrees, because 42 and 50 are connected via 38 and 52.

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As to Claim 3, Applicant argues:

“the first fastener (40) does not define a return flange (40) defining a channel— walls (40) and (42) are substantially perpendicular to each other so they do not form a channel”

Examiner respectfully disagrees, because two perpendicular arms define a “v” shape, which inherently is a channel (and can also be defined as a trench or groove).

As to Claim 4, Applicant argues:

“the second fastener is an attachment arm extending from the intermediate arm and defining a channel between the attachment arm and the lower arm. The limitation in amended claim 4 is not present in the ‘540 patent”

Examiner respectfully disagrees, because two perpendicular arms (50 and 52) define a “v” shape, which inherently is a channel (and can also be defined as a trench or groove) in which an attachment is made (Fig 6).

As to Claim 5, Applicant argues:

“the ‘537 patent is only cited as disclosing particular materials that may be used to form a clip... and so does not overcome the deficiencies of the ‘540 patent”

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Examiner respectfully disagrees. The deficiencies of the '540 patent is that the clip is not disclosed as being made of plastic, Examiner uses the '537 patent to teach that those 'particular materials' can be used in forming a similar clip, hence it does overcome the deficiencies of the '540 patent.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,363,537 to Schneider et al and US 6,061,882 to Otte-Weise cited to show a similar plastic clamping/ clip device having multiple attachment elements.

US 5,740,640 to Yasuda and US 5,702,148 to Vaughan cited to show similar clips used for door molding in automobiles having multiple attachment elements.

US 6,502,974 to Chase et al, US 6,698,808 to Burkhardt et al, US 6,164,807 to Gerstner, US 5,448,454 to Nonaka, and US 5,975,729 to Dobler all cited to show similar lamp assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JTK

10/13/2006



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